

STATE OF MICHIGAN
COURT OF APPEALS

STERLING BANK & TRUST,

Plaintiff-Appellee,

UNPUBLISHED
October 11, 2011

v

MARK A. CANVASSER,

Defendant-Appellant.

No. 299136
Oakland Circuit Court
LC No. 2010-107906-CK

Before: MURPHY, C.J., and TALBOT and MURRAY, JJ.

PER CURIAM.

Mark A. Canvasser appeals the grant of summary disposition in favor of Sterling Bank & Trust and the denial of Canvasser's request for dismissal in this breach of contract action.¹ We affirm.

On April 16, 1998, Canvasser signed a guaranty agreement and became a guarantor of a loan of funds from Sterling Bank & Trust to SC Southfield-Twelve Associates, LLC in the amount of \$1,125,000.² The purpose of the loan was related to a "leasehold interest in real estate in the City of Southfield." On February 3, 2006, Canvasser signed a promissory note and related documents for a \$100,000 line of credit with Sterling Bank & Trust. The purpose of the loan was "real estate investment." Canvasser was to begin to repay Sterling Bank & Trust the following month and continue to pay until March 2007. Thereafter, the line of credit was reduced and the maturity date extended until August 1, 2010.

The February 3, 2006, Line of Credit Loan Agreement contains "cross-collateralization" language stating that the collateral securing the loan "shall also constitute security for any other loans or agreements, if any, between Borrower and Bank, and the security for any other loans or agreements between Borrower and Bank shall also constitute additional security for the performance of all obligations of this agreement." The agreement also contains "cross-default" language that states in pertinent part that "[a]ny default under the terms shall constitute a default under all other instruments securing any relation thereto."

¹ MCR 2.116(I).

² Canvasser was a member of SC Southfield-Twelve Associates, LLC.

The Promissory Note of the same date states in pertinent part that Canvasser grants Sterling Bank & Trust a security interest in all of his “bank deposits, instruments, negotiable documents, and chattel paper” and should default occur “Bank may apply its own indebtedness or liability to Borrower or any guarantor to any indebtedness due under this Note.” Canvasser also agreed to “pay all of the Bank’s costs incurred in the collection of this Note, including reasonable attorney fees.”

On September 9, 2009, Sterling Bank & Trust filed a lawsuit against SC Southfield-Twelve Associates, LLC related to the alleged default of the April 16, 1998 loan. The lawsuit was amended to name Canvasser as a defendant in his role as a guarantor on February 19, 2010.

Also on February 19, 2010, Sterling Bank & Trust filed a complaint against Canvasser for breach of contract/promissory note related to the February 3, 2006, Promissory Note. Canvasser admitted to executing the referenced documents and making draws on the line of credit, but indicated that he could not admit or deny the balance.

On April 1, 2010, Sterling Bank & Trust filed a motion for summary disposition³ seeking an entry of judgment against Canvasser for damages incurred as a result of his alleged breach of the Promissory Note and “related agreements.” Sterling Bank & Trust argued that as of March 31, 2010, the total amount due on the line of credit was \$32,260.03. It also contended that while Canvasser was required to make monthly payments of \$3,246.01, he failed to do so beginning December 2009. It was also argued by Sterling Bank & Trust that since Canvasser failed to pay an installment of principal or interest when due, it could declare the entire principal balance of the note and all accrued interest, together with all other indebtedness of Canvasser to Sterling Bank & Trust, immediately due and payable. Sterling Bank & Trust also claimed it was entitled to additional attorney fees, interest, costs, expenses and other damages that have arisen.

Canvasser conceded in his response to Sterling Bank & Trust’s motion that there was no dispute regarding the execution or delivery of the loan documents at issue or the amount outstanding on the loan. Instead Canvasser argued that the Promissory Note and Line of Credit Loan Agreement at issue here, and the guaranty signed by Canvasser and at issue in a separate pending case, represent an “integrated lender/borrower relationship” because the agreements were “cross-collateralized” and “cross-defaulted.” As such the two actions arise out of the same transaction or occurrence and are the same claim so there could not be more than one action for breach.

The Court granted Sterling Bank & Trust’s motion for summary disposition and denied Canvasser’s request for dismissal of the action.⁴ The court ordered that judgment be entered against Canvasser in the amount of \$32,773.27, plus post-judgment statutory interest that accrued thereafter and until full and complete satisfaction of the judgment. It was also ordered that entry of the judgment would not preclude the claims of Sterling Bank & Trust against

³ MCR 2.116(C)(10).

⁴ MCR 2.116(I).

Canvasser in the companion case of *Sterling Bank & Trust, FSB v SC Southfield Twelve Associates, et al*, case number 2009-103771-CK.

On appeal, Canvasser argues that the trial court erred in granting Sterling Bank & Trust's motion for summary disposition and failing to apply MCR 2.203(A) and dismiss the case against him pursuant to MCR 2.116(C)(6) and (I). He contends that the Promissory Note and Line of Credit Agreement at issue in this case were "cross-collateralized" and "cross-defaulted" with the guaranty by Canvasser at issue in the SC Southfield-Twelve Associates, LLC case. As a result there is an "integrated lender/borrower relationship" and there cannot be more than one action for breach. Since the two actions arise out of the same transaction or occurrence and involve the same claim of alleged breach of contract under a lender/borrower relationship, it was required that the two actions be joined. We disagree that the two cases arise out of the same transaction or occurrence. As such, it was not required that the cases be joined.

"Appellate review of a motion for summary disposition is de novo."⁵ Sterling Bank & Trust's motion for summary disposition was brought pursuant to MCR 2.116(C)(10). "MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. The court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted or filed in the action to determine whether a genuine issue of any material fact exists to warrant a trial."⁶

Pursuant to MCR 2.203(A):

In a pleading that states a claim against an opposing party, the pleader must join every claim that the pleader has against that opposing party at the time of serving the pleading, if it arises out of the transaction or occurrence that is the subject matter of the action and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

A motion may be brought on the ground that "[a]nother action has been initiated between the same parties involving the same claim."⁷ "If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party."⁸

First, it must be determined whether the two loans Canvasser was involved in with Sterling Bank & Trust arise out of the same transaction or occurrence. "The mere fact that similar legal issues were involved . . . does not mean that all of the actions arose out of the same

⁵ *Spiek v Mich Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998).

⁶ *Id.*

⁷ MCR 2.116(C)(6).

⁸ MCR 2.116(I)(2).

transaction. . . . [A]ctions arise from the same transaction or occurrence only if each arises from the identical events leading to the other or others.”⁹

The two lawsuits did not arise out of the same transaction or occurrence.¹⁰ First, the two loans were entered into on different dates. Second, the parties to the loans were not the same. Third, Canvasser’s capacity related to both loans was different. Finally, the loans were for different purposes.

Canvasser has provided no citation to case law or statute to suggest that the “cross-collateralization” and “cross-default” language in the February 3, 2006 Line of Credit Loan Agreement and related Promissory Note has the contractual effect of creating an “integrated lender/borrower relationship.” “It is not sufficient for a party ‘simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel or elaborate for him his arguments, and then search for authority either to sustain or reject his position.’”¹¹ Additionally, neither lawsuit brought by Sterling Bank & Trust is related to a violation of the “cross-collateralization” and/or “cross-default” clauses. Both lawsuits allege the respective borrower’s failure to repay the loan.

Even if we were to assume *arguendo* that Canvasser’s assertion that contracts containing “cross-collateralization” and “cross-default” language arise from the same transaction or occurrence, that argument still must fail in this case. “The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties.”¹² Assuming both loans are related to the same subject matter, “. . . the intention of the parties must be gleaned from all the agreements.”¹³ Although the February 3, 2006, Promissory Note and Line of Credit Loan Agreement contain “cross-collateralization” and “cross-default” language, there is no such language in the guaranty Canvasser signed or the Promissory Note related to the April 16, 1998, loan. The parties to the April 16, 1998, contract did not agree to be cross-collateralized and cross-defaulted. Since those clauses do not apply to both contracts, it would be improper to join the cases.

The cases do not involve the same transaction or occurrence and are not making the same claim. Since Canvasser conceded that there was no dispute regarding the execution or delivery of the loan documents at issue or the amount outstanding on the loan, the trial court properly

⁹ *Ross v Onyx Oil & Gas Corp*, 128 Mich App 660, 669; 341 NW2d 783 (1983) (citation omitted).

¹⁰ *Id.*

¹¹ *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

¹² *Grosse Pointe Park v Mich Municipality Liability and Prop Pool*, 473 Mich 188, 219; 702 NW2d 106 (2005) (citation omitted).

¹³ *Omnicom of Mich v Giannetti Inv Co*, 221 Mich App 341, 346; 561 NW2d 138 (1997).

granted Sterling Bank & Trust's motion for summary disposition and denied Canvasser's request for dismissal.

Affirmed.

/s/ William B. Murphy

/s/ Michael J. Talbot

/s/ Christopher M. Murray